

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



74-2625

UNITED STATES COURT OF APPEALS

For the Second Circuit.

Docket No. 74-2625

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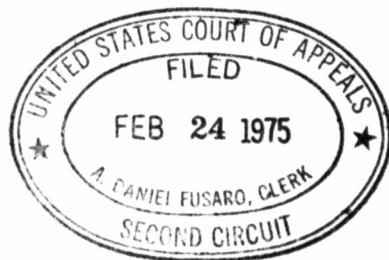
ARTHUR L. STAIR and BERNICE STAIR,  
Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA,  
Defendant-Appellee.

On Appeal From the United States District Court for  
the Northern District of New York

APPENDIX



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United States Department of Justice,  
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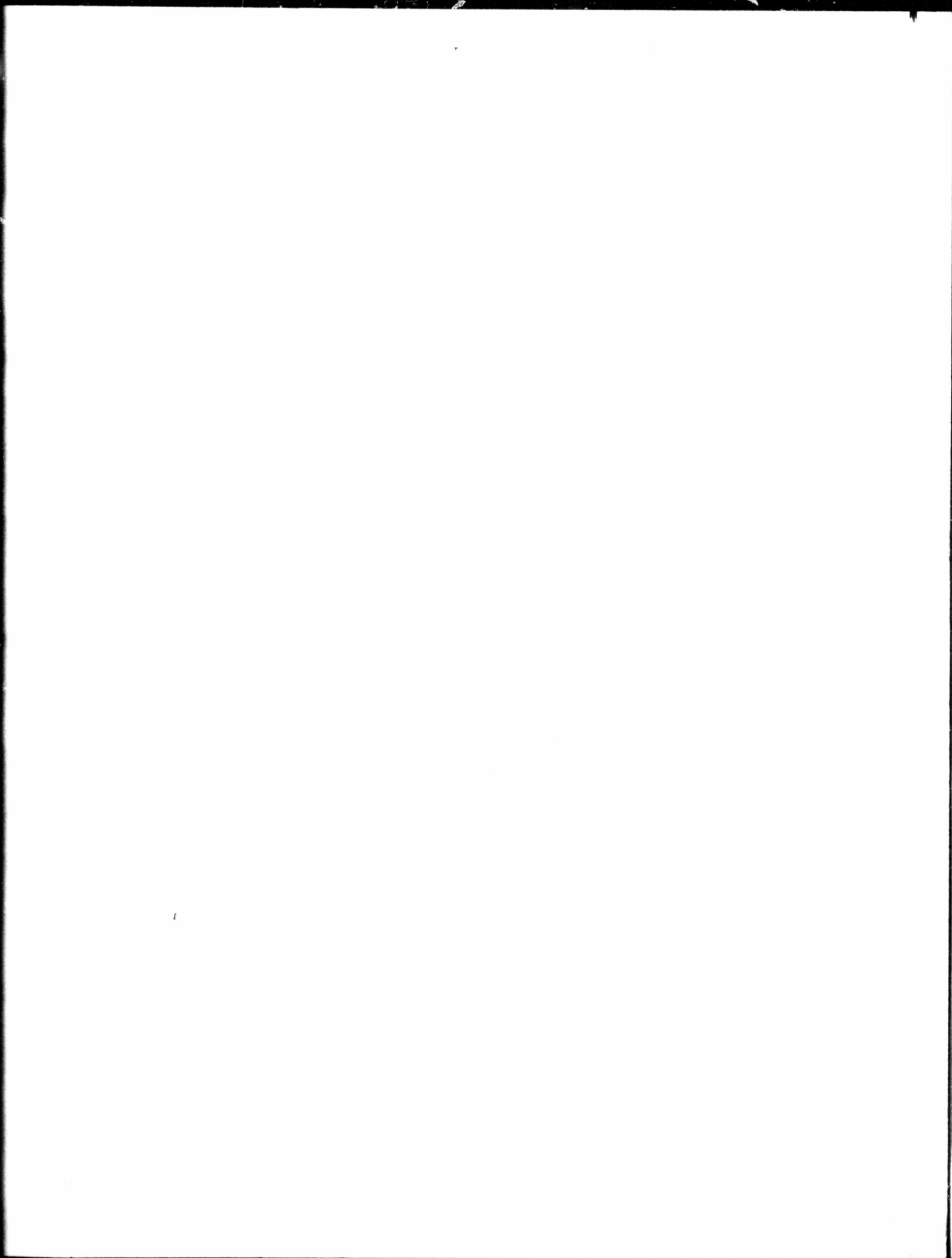
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IN THE  
UNITED STATES COURT OF APPEALS

For the Second Circuit.

No. 74-2625

---

ARTHUR L. STAIR and BERNICE STAIR,  
 Plaintiffs-Appellants,  
 vs.

UNITED STATES OF AMERICA,  
 Defendant-Appellee.

On Appeal From the United States District Court for  
 the Northern District of New York

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Docket Entries.

Date	Proceedings
1970	
Oct. 20	Filed Complaint and Exhibit A and issued Summons - 1 Orig. and 4 Copies and delivered to U.S. Marshal for service
Oct. 26	Filed Summons served October 21, 1970 on Attorney General by certified mail; served October 21, 1970 on Brian Mumford, Asst. U.S. Attorney
Dec. 30	Filed Answer of Defendant, Affidavit of Service by Mail and photostatic copy of Waiver of Restrictions on assessment of collections of deficiency in tax
1972	
Nov. 9	Filed Notice of Motion returnable Dec. 11, 1972 at Syracuse, Motion to Strike Insuff. Defense
Dec. 6	Filed Memorandum in opposition to plaintiffs' motion to strike defendant's second defense

## Docket Entries

Date	Proceedings
Dec. 11	Filed Memorandum in response to defendant's memorandum and in support of plaintiffs' motion to strike defendant's second defense
Dec. 11	Motion to strike - insufficient defense. Denied. Hold. Order to be submitted
1973	
Jan. 8	Filed Order denying plaintiffs' motion to strike defendant's second defense without prejudice to bringing motion at a later date - HON. E. PORT, USDJ - 12/26/72
May 11	Filed Deposition taken December 11, 1972 at Syracuse
May 30	Filed Deposition of Robert J. Lyden
1974	
Mar. 29	Alert notices mailed
June 25	Filed Motion for summary judgment returnable Sept. 9, 1974
June 25	Filed Brief in support of defendant's motion for summary judgment
June 25	Filed Stipulation of facts
Sept. 9	Motion for summary judgment. Adjourned to Oct. 14, 1974 at Syracuse on consent
Oct. 11	Filed letter/Memorandum in opposition to defendant's motion for summary judgment
Oct. 11	Motion for Summary Judgment - Granted Dismissing Plaintiffs' complaint. Submit Order
Oct. 30	Filed judgment dismissing action with prejudice and granting US costs of action
Nov. 15	Filed Notice of Appeal
Nov. 18	Filed Letter Application for re-argument.
Nov. 18	Filed Memorandum and Order denying motion for re-argument. SO ORDERED - HON. E. PORT
Dec. 13	Filed copy of transcript of proceedings held Oct. 11, 1974 at Syracuse - Port

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ARTHUR L. STAIR and BERNICE STAIR ,

Plaintiffs,

- vs -

CIVIL ACTION NO.

UNITED STATES OF AMERICA ,

Defendant.

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COMPLAINT

Plaintiffs, Arthur L. Stair and Bernice Stair, by their attorneys, Harry Bangilsdorf and David G. Stearns, allege as follows:

1. This is an action arising under the internal revenue laws of the United States of America, and jurisdiction is duly conferred upon this Court pursuant to the provisions of Section 1346(a)(1) of Title 28 of the United States Code.

2. Plaintiffs are and were at all times hereinafter mentioned husband and wife, residing at 900 Murray Hill Road in the Town of Vestal, County of Broome and State of New York.

3. For and with respect to the calendar year 1964, plaintiffs duly and seasonably filed a joint "U.S. Individual Tax Return" (Form 1040) indicating an income tax due of \$71,653.05 (including \$259.20 of self-employment tax), all of which was seasonably paid by them to the defendant upon or prior to such filing.

4. Following an audit of the said 1964 joint federal income tax return, the defendant during 1966 illegally and erroneously assessed against the plaintiffs an additional income tax deficiency for and with respect to the said calendar year 1964 in the amount of \$41,420.54, together with interest thereon.

5. At the same time the defendant advised the plaintiffs that the principal reason underlying the asserted deficiency was the defendant's disallowance, in part, of the plaintiffs' claim that certain profits arising out of a condemnation of land in the said Town of Vestal owned by the plaintiff, Arthur L. Stair, were capital gains; the said profits were re-characterized by the defendant as ordinary income.

6. On December 30, 1966 the plaintiffs paid to the defendant the said assessed deficiency of \$41,420.54, together with interest thereon in the additional amount of \$4,148.86.

7. On November 25, 1968 the plaintiffs duly filed with the defendant a Claim (Form 843) for refund of such tax in the amount of \$39,502.54, together with appropriate interest thereon. A true copy of the said Claim is annexed hereto and hereby made "Exhibit A" of this Complaint, and expressly incorporated herein by reference.

8. The amount of the plaintiffs' said Claim was (and is) computed by treating all of the said condemnation profits as capital gains and not as ordinary income. The remaining issue raised by the defendant (depreciation) was not (and is not) contested.

9. On or about March 19, 1969 the defendant advised the plaintiffs of its rejection of their said Claim for refund of the said \$39,502.54. Additionally, more than six months have elapsed since the Claim was filed with the defendant.

10. By virtue of the foregoing, the defendant is now indebted to the plaintiffs in the amount of \$39,502.54, together with interest thereon as provided by law.

WHEREFORE, plaintiffs demand judgment against the defendant for the sum of \$39,502.54, together with appropriate interest thereon as provided by law, for the costs and disbursements of this action and for such other and further relief as to this Court may appear just and proper.

---

Harry Bangilsdorf

---

David G. Stearns

Attorneys for Plaintiff  
Office and P. O. Address  
c/o Stearns & Stearns, Esqs.,  
507 Press Building  
Binghamton, New York 13901  
Telephone: 723-9481

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FORM <b>843</b> (Rev. July 1965)	U.S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE		District Director's Stamp (Date Received)
	<b>CLAIM</b> TO BE FILED WITH THE DISTRICT DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID		
The District Director will indicate in the block below the kind of claim filed, and fill in, where required.			
<input type="checkbox"/> Refund of Taxes Illegally, Erroneously, or Excessively Collected.			
<input type="checkbox"/> Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.			
<input type="checkbox"/> Abatement of Tax Assessed (not applicable to estate, gift, or income taxes).			
PLEASE TYPE OR PRINT PLAINLY			
Name of taxpayer or purchaser of stamps <b>Arthur L. and Bernice Stair</b>			
Number and street <b>900 Murray Hill Road</b>		City, town, State, Postal ZIP Code <b>Binghamton, N.Y. 13903</b>	
Fill in applicable items—Attach letter size sheets if space is not sufficient			
a. Your social security number <b>174 22 6993</b>	b. If an employer, enter employer identification number		
c. District in which return (if any) was filed <b>Buffalo, New York</b>	d. Name and address shown on return, if different from above <b>Same</b>		
e. Period—if for tax reported on annual basis, prepare separate form for each taxable year From <b>January 1</b> , 19 <b>64</b> , To <b>December 31</b> , 19 <b>64</b>		f. Kind of tax <b>Personal Income Tax - 1040</b>	
g. Amount of assessment <b>\$ 113,073.59</b>	Dates of payment <b>Apr. 15, 1965 - \$71,653.05; Dec. 22, 1966 - \$41,420.54 &amp; Int \$4,148.86</b>		
h. Date stamps were purchased from Government	i. Amount to be refunded (If income tax, complete computation below) <b>\$ 39,502.54*</b>	j. Amount to be abated (not applicable to income, estate, or gift taxes) <b>\$</b>	

k. The claimant believes that this claim should be allowed for the following reasons:

Part of gain from the disposition of 95.396 acres of land appropriated by condemnation by the State of New York was treated by IRS as ordinary income. Taxpayers take position that entire gain resulting from this transaction was long term capital gain (Iri-S Corporation, CA-10, 8-22-68)

\* or such amount as may be found to be due.

COMPUTATION OF INCOME TAX REFUND	Income Tax
1. Tax withheld.....	12,637.85
2. Estimated tax paid.....	59,015.20
3. Tax paid with original return.....	41,420.54
4. Any additional income tax paid.....	113,073.59
5. Total tax paid (Add lines 1-4).....	73,571.05
6. Less: Your computation of correct tax.....	39,502.54
7. Amount of overpayment.....	-0-
8. Amount previously refunded.....	39,502.54
9. Net overpayment (Enter in item i above).....	

Under penalties of perjury, I declare that this claim, including any accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief it is true and correct.

Signed .....

Dated: ....., 19.....

SEE INSTRUCTIONS ON REVERSE

EXHIBIT A



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

ARTHUR L. STAIR and BERNICE  
STAIR,

Plaintiffs

v.

UNITED STATES OF AMERICA,

Defendant

CIVIL ACTION NO. 70-CV-366

A N S W E R

The defendant, the United States of America, by its attorney, James H. Sullivan, Jr., Esquire, United States Attorney for the Northern District of New York, answers plaintiffs' complaint as follows:

1. Admits the allegations contained in paragraph 1 of the complaint, except that it avers that jurisdiction exists, if at all, pursuant to Title 28, Section 1346(a)(1) of the United States Code.
2. Admits the allegations contained in paragraph 2 of the complaint.
3. Admits the allegations contained in paragraph 3 of the complaint.
4. Denies the allegations contained in paragraph 4 of the complaint.
5. Admits the allegations contained in paragraph 5 of the complaint.
6. Admits the allegations contained in paragraph 6 of the complaint, except the defendant denies each and every allegation of fact contained in the claim for refund.
8. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the complaint.
9. Admits the allegations contained in paragraph 9 of the complaint.

10. Denies the allegations contained in paragraph 10 of the complaint.

SECOND DEFENSE

1. The plaintiffs are stopped from bringing suit because of their signing of a Form 870-AD--Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax. This document was signed on November 4, 1966, and accepted on behalf of the Commissioner of Internal Revenue on November 29, 1966. Attached as Exhibit A is a copy of the Form 870-AD.

WHEREFORE, having answered each and every allegation in the complaint, defendant demands judgment in its favor with costs to be paid by plaintiffs.

Defendant demands trial by jury.

United States Attorney

Of Counsel:

Stephen T. Lyons  
Trial Attorney  
Department of Justice  
Washington, D. C. 20530

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing Answer has this \_\_\_\_\_ day of December, 1970, been served upon counsel for the plaintiffs by depositing a copy thereof, in the United States mail, postage prepaid addressed to Harry Bangiladorf, Esquire, Stearns & Stearns, 507 Press Building, Binghamton, New York 13901.

Stephen T. Lyons  
Trial Attorney  
Department of Justice  
Washington, D. C. 20530



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF NEW YORK

ARTHUR L. STAIR and BERNICE  
STAIR,

Plaintiffs

vs

Civil Action  
# 70-CV-366

UNITED STATES OF AMERICA,

Defendant

DEPOSITION

Held at Federal Building,  
Syracuse, New York  
December 11, 1972  
1:00 P.M.

APPEARANCES:

For the Plaintiffs:

Stearns & Stearns  
Harry Bangilsdorf, Esq. and David G. Stearns, Esq., of counsel  
507 Press Building  
Binghamton, New York 13902

For the Defendant:

Stephen T. Lyons, Esq.  
Tax Division  
U. S. Department of Justice  
Washington, D. C. 20530

EXCERPTS OF STAIR DEPOSITION

REPORTED BY:

Margaret L. Whitmore  
404 Park Avenue  
Syracuse, N.Y. 13204

BY MR. LYONS:

\* \* \*

Q Now, Mr. Stair, the document which you signed, and your wife signed only because it was a joint return at the time you signed it, did you understand it?

A Yes.

Q Did anybody ever explain it to you - what it meant?

A No.

Q In other words, the only meaning you ever got from Form 870AD was from what you read?

A I did not read it, truthfully. I signed it because of what he said. I agreed to the figure that was there, according to the computation. I have not read the form to this date.

Q Do you always do that when signing your name?

A I do very often, when I feel I can trust who I am dealing with.

Q At the time you signed this document did you know that it precluded you from ever filing a claim for refund?

A It never even entered my mind.

MR. BANGILSDORF: I object to that.

MR. LYONS: He already answered.

BY MR. LYONS:

Q I guess now, today, Mr. Stair, you realize what this thing says - in particular, that you agreed not to file a claim for refund. You realize that today, don't you?

A I realize that. Perhaps not what you are saying - in those exact words. That is what I heard. I had no intention at the time of filing for a refund.

Q Today, right now, you know this document says you agreed not to file for a refund?

MR. BANGILSDORF: I object to that.

MR. LYONS: I am asking him today.

MR. BANGILSDORF: He answered he did not know at the time he signed it.

THE WITNESS: Where does it say?

MR. LYONS: Beginning right there (indicating).

THE WITNESS: What does this mean, "Other than for the amount of over-assessment shown above."?

MR. LYONS: Here is the assessment.

BY MR. LYONS:

Q There is nothing shown in the over-assessment column, is there?

A No.

That is the first I read that.

Q At least now, today, you know that what you signed back in 1966 stated you were not to file a claim for refund?

A The paper which I signed says, no refund or credit filed for prosecution for year above stated.

Q Now, with that in mind, Mr. Stair, can you tell me whose idea it was that the agreement - or, that the claim for refund be filed, in light of this statement here?

A My accountants notified me that a recent case, in their opinion, had direct bearing on our case. After a conference with them concerning it, with my agreement, we filed for a refund of the taxes, based on the capital gains treatment.

Q Did they ever notify you about this particular clause in the agreement that you signed?

A If they did, I did not catch it.

Q So, to the best of your knowledge, up until today you knew nothing about that clause?

A I knew that the paper I had signed -- They told me - My accountants told me the paper I had signed was being held up by the Government, in their original contact with the Government about

this claim for refund - - was one of the reasons they were giving as saying we had no right to a refund.

Q That was the first you had any inkling at all about this clause being in the agreement?

A That was the first time it was brought to my attention - at least in any measure that stuck.

Q During your personal negotiations with the Internal Revenue Service, did you feel at any time they had tried to trick or deceive you? Even upon reflection?

A He knew a lot more about it than I did. Other than that, no.

Q To the best of your knowledge, and your knowledge today, you felt the Internal Revenue Service treated you fairly and, perhaps, impartially?

A I can't give an unqualified yes. I can come close, but not unqualified.

Q What would be your qualification?

A He knew a lot more about it than I did.

Q Do you feel he took advantage of you because of this knowledge?

A I asked him what would happen if I did not settle. Obviously, my reason for coming to that conference was because of my own fear of ending up into a court case, and I have never had a court case with the Government. I never had a court case period.

My wife and I, in talking it over, decided we were going to avoid a court case if at all possible - any long, drawn-out proceeding. It would have been a disaster if the land was taken by condemnation and the gain was paid out in taxes.

I spoke to him just like I am speaking to you. I told him what my real basic reasons were for coming there to talk to him myself. When he said to me, "I believe, in my opinion, the Government has as good a case as you do," I believed him.

I do not feel he deliberately tricked me or deliberately misled me, so when - -

14a

Q Do you feel he misled you in fact? Deliberately or otherwise?

A No.

\*

BY MR. STEARNS:

Q I think, Mr. Stair, you testified, with some qualification or other, you did not believe Mr. Lyden, representing the Internal Revenue Service, intentionally misled you or tried to pull any fast one on you.

My question is, did you intentionally mislead Mr. Lyden, or try to pull any fast one on him?

A No.

\* \* \*

BY MR. BANGILSDORF:

Q Now, about this mis-representation thing, willing or unwilling, between Mr. Lyden and you, when he said to you he felt the Government had as good a case as you did, do you know whether in fact that is true?

A No.

Q Could you evaluate the Government's position and your position, with respect to the percentage merits of each side?

A From a technical standpoint, no.

MR. BANGILSDORF: That is all.

Wait.

BY MR. BANGILSDORF:

Q In other words, you relied on what he said with respect to the respective merits of the Government's side and your side?

A Yes.

MR. BANGILSDORF: That is all.

MR. LYONS: Just one more question.



15a

BY MR. LYONS:

Q Did you ever take this offer back to your accountants and ask them what they thought about it?

A I told the accountants after the fact - I guess. After I did it.

Q Was there a reason why you did not approach them with the offer prior to agreeing to it?

A When they came back after their conference with Mr. Lyden, they said they were offered no negotiations at all. So I did not take it back until after it was settled.

Q The only reason you did not take it back to them was Mr. Lyden told Mr. Bangilsdorf and Mr. Piaker there was no negotiation?

A Yes.

I would say, I did tell them that I was continuing negotiating with Mr. Lyden.

Q Did Mr. Lyden ever make anything of the fact you appeared on your own behalf rather than with your representative?

A Mr. Lyden did mention, at one time or another, either at the conference or on the phone, about notifying somehow my accountants - those who had been representing me the first time.

Q He asked you to notify them?

A Either asked me, or else he notified them - by either word or sending them correspondence; and I don't recall which.

Q As a matter of fact, I am the one who told you, advised you about the decision handed down which would favorably affect you and advised you to file a claim for refund, and actually prepared the claim for refund for your signature?

A Yes.

\* \* \*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
ARTHUR L. STAIR and BERNICE STAIR,  
  
Plaintiffs,

vs.

UNITED STATES OF AMERICA.  
-----

Deposition of ROBERT J. LYDEN, taken in room 300,  
Appellate Division of Internal Revenue, Federal Building, Buffalo,  
New York, on December 12th, 1972, commencing at 11:00 A.M.,  
before EMMA L. HOLMES, Notary Public.

APPEARANCES:

STEARNS & STEARNS  
By DAVID G. STEARNS, ESQ.  
507 Press Building  
Binghamton, New York,  
Appearing for the Plaintiff.

EXCERPTS OF LYDEN DEPOSITION

17a

EXAMINATION BY MR. STEARNS:       \*       \*       \*

Q Did Mr. Bangilsdorf or Mr. Piaker ever offer you a bribe during that conference?

A No, sir.

Q Off the record?

A No!

(Discussion off the record.)

BY MR. STEARNS:

Q On the record. Did they offer you any favors of any kind?

A No, sir.

Q Did they imply any such bribes or favors?

A No, sir.

Q Did they offer or imply anything to you relative to the settlement or non-settlement of the case?

A No.

Q Did they confine their conversation with you to remarks concerning the Stair case and the Stair case alone?

A As far as I can remember, yes. I don't see any reason to discuss anything else.

\*       \*       \*

BY MR. STEARNS:

Q Did you then or do you now believe that either Mr. Bangilsdorf or Mr. Piaker attempted in any manner to trick or deceive the government into a settlement?

A To the best of my knowledge, no.

Q How about to trick or deceive the government in any way, into any kind of unfair arrangement, unfair to the government in this particular case?

A I don't think -- to trick, no.

Q Or deceive in any manner?

A Nothing. I have no reason at all to think anything like that.

\*       \*       \*

BY MR. STEARNS:

Q At this point in time, that is the conclusion of that

conference in Syracuse, did you believe or do you believe now that at that point in time, Mr. Stair had attempted in any way, shape or manner to trick or deceive the government in any way?

A No.

Q Or, to falsify a fact?

A I have no reason.

Q Or, to withhold a material fact?

A I have no reason to think anything like that.

Q Or, to color or miscolor let me say, a fact?

A No.

\* \* \*

BY MR. STEARNS:

Q Did he make known to you at the October 19, 1966 conference, why he wanted to see you alone or why he had come alone?

A I think his -- if I can recall, his main purpose in wanting a second conference was to somehow close the case if he could.

Q Did he mention or advise you why he chose to do it without his professional representative or without either of his professional representatives?

A If he said anything specific, I can't recall it.

MR. STEARNS: Off the record.

(Discussion off the record.)

BY MR. STEARNS:

Q Did Mr. Stair ever offer to you, directly or indirectly, any bribes, however designated?

A No, sir.

Q Favorable to settling this case in his favor?

A No, sir.

Q Did Mr. Stair directly or indirectly, ever offer you any favors approaching bribery or not approaching a bribe, but in return for a favorable disposition of the case?

A No.

Q Did Mr. Stair ever offer to you, directly or indirectly, any side deals of any type or description in this case?

A No.

MR. STEARNS: Off the record.

(Discussion off the record).

BY MR. STEARNS:

Q Did Mr. Stair or any of his professional representatives, ever in fact give you a bribe or any favors of any kind in return for a satisfactory conclusion of this case?

A No.

\* \* \*

BY MR. STEARNS:

Q Did Mr. Stair, or for that matter, before him, Bangilsdorf or Piaker, ever tell you anything, any factual representation or otherwise, which turned out subsequently to your knowledge to be untrue?

A Not that I can recall, no.

Q Did they ever tell you any such thing, any of the three of those men ever tell you anything relative to this case which turned out to be subsequently only partially true and partially false?

A Not that I can recall.

Q How about Mr. Stair's behavior at your conference with him? Do you recall anything about it, his demeanor, his bearing, his conduct with you?

A The only thing, Mr. Stair was a real gentleman. He was very much to the point. He was very concerned it seems as I recall with his case, hoping to -- that it could be settled.

\* \* \*

BY MR. STEARNS:

Q All right. Do you now and did you, immediately following the conclusion of the case, believe that Mr. Stair in any way, shape or manner, tricked or deceived or attempted to trick or deceive the government into an otherwise uncalled for settlement?

A No.

Q Did you believe he engaged in any sort of gimmickery or chicanery in connection with his association with the government?

A No.

Q Did Mr. Stair ever refuse to answer a question that you put to him?

A Not that I can recall, no.

Q Did he ever appear to be evasive in answering any question propounded by you?

A Not that I can recall.

Q Did he ever hesitate in his answers to you?

A Again, not that I can recall.

Q Did you ever show him form 870A.D.?

A I can't answer at this time. I don't know whether I would have had a blank copy available at the time of the conference or not.

Q Did you ever explain to him what an 870A.D. was or its operative effect?

A I assume I must have had some discussions but as to exactly what I said, what I may have said, I don't recall.

Q Would you have had that discussion with him that you assume you must have had, at the conference?

A If -- whatever discussion it was as to the agreement form would have been at the conference.

Q Do you recall specifically if at the conference there was then a discussion concerning the 870A.D., its effect, its significance?

A At that point, I can't recall.

Q Did Mr. Stair at the time of his conference with you, make any specific settlement proposal or overtures -- let me make it settlement proposals?

A It was Stair who made the proposal, yes.

Q Did you initiate any settlement arrangement with him?

A As best I can recall, the settlement proposal originated with Mr. Stair.

Q And, it did not therefore originate with you?

A That's right.

\* \* \*

BY MR. STEARNS:

A After the second conference and the -- Mr. Stair offered the settlement and my acceptance of it, I sent him this letter with the agreement form directly as he requested me to do.

Q Was anything to your recollection transmitted to Stair with this November 3rd, 1966 letter, other than the proposed 870A.D.?

A The report indicates that the only thing sent therewith was the agreement form. If there had been any other enclosures, they should have been so listed.

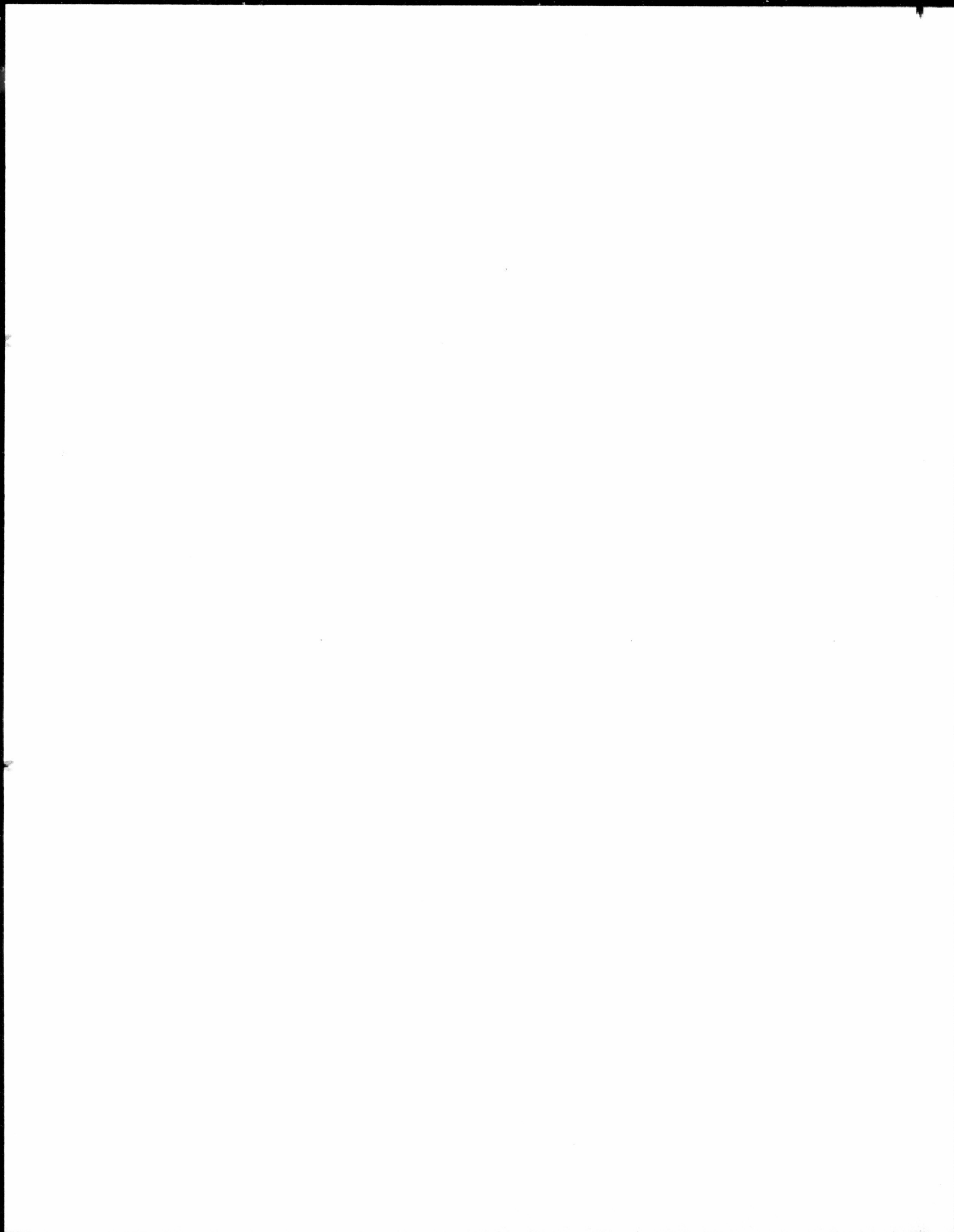
Q You recall then there were no enclosures by way of instruction sheets or Internal Revenue blurb sheet?

A No. I doubt there would have been anything like that, but I do know aside from the enclosure, there was also a copy of the letter sent to the representative.

Q To Mr. Bangilsdorf?

A Yes.

\* \* \*





Estoppel Issue

23. Upon audit of the taxpayers for 1964, the Internal Revenue Service determined, among other things, that the gain from the condemnation of the 95.396 acres of land was ordinary income and was not capital gains.

24. Accordingly, the Internal Revenue Service proposed a deficiency against the taxpayers for 1964 in the amount of \$83,065.69, almost all of which was attributable to the issue of ordinary income versus capital gains on the condemnation. The very small portion of the proposed deficiency not attributable to this issue is not in dispute in this case.

25. The taxpayers engaged the services both of Harry Bangilsdorf, an attorney and certified public accountant, and of Abraham L. Piaker, a certified public accountant, to represent them before the Internal Revenue Service in connection with the proposed deficiency.

26. After filing a protest (prepared by Mr. Bangilsdorf on behalf of the taxpayers during July of 1966, Messrs. Bangilsdorf and Piaker met in Syracuse, New York with an Internal Revenue Service Appellate Division conferee, Mr. Robert J. Lyden, in August of 1966. At that conference several legal and factual matters were discussed, all referable solely to the ordinary-income-versus-capital-gains issue, and various settlement proposals were put forth by Messrs. Bangilsdorf and Piaker. No settlement was reached then.

27. Shortly after the conference with Mr. Lyden, Messrs. Bangilsdorf and Piaker reported thereon to Mr. Stair and, at the same time, recommended that the matter be litigated.

28. Thereafter, arrangements were made by Mr. Stair personally for a conference with Mr. Lyden, this one involving only Mr. Stair and not including either of his two representatives, although those two representatives were aware that such a conference was being scheduled.

29. Following such direct contact from Mr. Stair, Mr. Lyden and he set up a conference and actually met in October of 1966, further to discuss the case and explore settlement possibilities.

30. At that second conference, also held at Syracuse, New York, after some discussion of the case, Mr. Lyden explained to Mr. Stair the gravamen of the Government's case.

31. After listening to Mr. Lyden's observations and arguments, Mr. Stair offered to settle the case on the basis of an approximate 50/50 split (i.e., consider 50% of the gain as long-term capital gain and the remaining 50% thereof as ordinary income).

32. At the conference, Mr. Lyden advised Mr. Stair that he (Lyden) would recommend acceptance by the Internal Revenue Service of Mr. Stair's settlement proposal.

33. Shortly after the conference between Mr. Lyden and Mr. Stair, Mr. Lyden telephoned Mr. Stair to advise that his (Mr. Lyden's) supervisor would not approve the settlement arrangements which the two had concluded. As a result of this telephone call, a substitute settlement understanding was arrived at between Mr. Lyden and Mr. Stair, under which there would be an approximate 50/50 "tax" split (i.e., roughly 50% of the deficiency as originally proposed by the Internal Revenue Service). This substituted settlement arrangement proved to be acceptable to Mr. Lyden's supervisor and the Government.

34. During November, 1966, a Form 870-AD ("Offer of Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and of Acceptance of Overassessment") was forwarded by Mr. Lyden to the taxpayers. The taxpayers promptly executed the document and returned it to Mr. Lyden. Subsequently, in the same month, the offer was duly accepted (executed) on behalf of the Government. A copy of the Form 870-AD, as duly executed both by the taxpayers and by the Government, is attached hereto as Joint Exhibit 2.

35. The settlement set forth in the Form 870-AD contemplated a deficiency assessment against the taxpayers in the amount of \$41,420.54.

36. On December 30, 1966, the taxpayers paid to the Internal Revenue Service the amount (\$41,420.54) of the deficiency set forth in the executed Form 870-AD, together with appropriate interest thereon.

37. Acting upon the advice of Messrs. Bangilsdorf and Piaker, the taxpayers on November 25, 1968 duly filed with the Internal Revenue Service a claim (Form 843, a copy of which is attached hereto as Joint Exhibit 3), seeking a refund of \$39,502.54 (plus appropriate interest thereon) of the said \$41,420.54 theretofore paid by them on December 30, 1966. The principal amount of \$39,502.54 represented that portion of the deficiency attributable to the issue of ordinary income versus capital gains on the condemnation of the 95.396 acres of land.

38. On March 19, 1969 the Internal Revenue Service advised the taxpayers of its rejection of their claim for refund of the said \$39,502.54 or any part thereof.

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF NEW YORK

-----X  
ARTHUR L. STAIR and BERNICE STAIR,  
Plaintiffs

v.

UNITED STATES OF AMERICA,  
Defendant  
-----X

:  
:  
:  
:  
:  
: CIVIL ACTION NO. 70-CV-366  
:  
: MOTION FOR SUMMARY JUDGMENT  
:  
:  
:-----X

Comes now the defendant, the United States of America,  
by its attorney, James M. Sullivan, Jr., United States  
Attorney for the Northern District of New York, and moves  
the Court pursuant to Rule 56 of the Federal Rules of  
Civil Procedure, to enter a summary judgment in its favor.  
The defendant asserts the following as its grounds for  
recovery:

1. There is no genuine issue as to any material  
fact; and
2. As a matter of law, the plaintiffs are estopped  
from filing a claim for refund for 1964 and hence a  
complaint for refund for that year.

\_\_\_\_\_  
United States Attorney

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK

3 -ARTHUR L. STAIR AND BERNICE STAIR Plaintiffs, -

4 -against-

5 -UNITED STATES OF AMERICA Defendants. -

6 70-CV-366

7 The following proceedings took place on the 11th  
8 day of October 1974, at the United States District Court,  
9 Federal Building, Syracuse, New York, before HONORABLE  
10 EDMUND PORT, United States District Judge.

11  
12 A P P E A R A N C E S:

13 DAVID G. STEARNS, ESQ.  
14 Attorney for Plaintiffs  
15 507 Press Building  
16 P. O. Box 1964  
17 Binghamton, New York 13902

18 JAMES M. SULLIVAN, Jr.  
19 United States Attorney  
20 THOMAS LAWLER  
21 Trial Attorney, Tax Division  
22 U. S. Department of Justice  
23 Of Counsel  
24 Attorney for U. S. of America  
25 Federal Building  
Syracuse, New York

1 THE COURT: There is not much point in my hearing  
2 an argument and receiving memoranda at this time.

3 MR. STERNS: I admit, Your Honor, I am tardy in  
4 this submission. I was wondering whether I could --

5 THE COURT: I would like to decide this right now.  
6 I have reviewed the matter. I will take it, it looks  
7 like it is short, I probably can scan it as you are  
8 arguing.

9 MR. LAWLER: Your Honor, this too is a civil tax  
10 refund action, and in this case the motion before the  
11 court is one for summary judgment.

12 The basis of that motion is equitable estoppel.  
13 It is our contention that on the administrative level  
14 of the Internal Revenue Service the parties entered into  
15 an agreement on what is known as Form 87ad. Under that  
16 agreement, Your Honor, the Government agreed not to  
17 assess any deficiency in tax, and the taxpayer agreed  
18 to pay part of the proposed deficiency and not to file  
19 a claim for refund.

20 Now what has happened in this case, Your Honor,  
21 the Government has lived up to its part of the bargain,  
22 it has granted a refund of part of the money claimed.  
23 However, the taxpayer in this case has not lived up to  
24 its part of the bargain. It has filed a claim for  
25 refund and subsequently instituted this law suit seeking

1 to recover that part of the money that the Government  
2 did not give over in the compromise agreement.

3 However, Your Honor, that part of the money that  
4 the Government did not give over in the compromise  
5 agreement cannot be assessed against the taxpayer at  
6 this date, because the statute of limitations with  
7 respect to assessing that amount has run.

8 Therefore, Your Honor, we can never collect this  
9 tax, yet the taxpayer is seeking the refund of that  
10 amount of tax.

11 I will be brief, Your Honor, I believe that our  
12 total argument is set forth in our memorandum of law.  
13 I might just note that this morning plaintiff's counsel  
14 has supplied me with what appears to be a letter  
15 memorandum. I haven't had the opportunity to read  
16 through it or to fully analyze it, and I at this time  
17 can't address myself to it, Your Honor. I would be  
18 more than happy to attempt to answer any questions you  
19 might have.

20 THE COURT: All right. Mr. Stearns?

21 MR. STEARNS: Your Honor, on the submission of  
22 that brief or letter memo on behalf of plaintiffs,

23 I had initially determined not to file any brief at all,  
24 but lately, very recently, we came to a determination  
25 on it which is only to contest some of the charges,



1 factual charges contained in the Government's brief  
2 and for no other purpose.

3 We stand essentially on a brief which we submitted  
4 to this court almost two years ago. You may recall,  
5 Your Honor, that from this very bench in December, I  
6 believe it was, 1972, you ruled against the taxpayer  
7 in their original motion to strike this defense as a  
8 matter of law from the Government's answer. At the  
9 time you denied our motion to strike that defense,  
10 you indicated from the bench and implied in the written  
11 order that followed, that you were granting that motion  
12 in order to give the Government a full chance to prove  
13 its case. In other words, as we understand it you were  
14 more or less recognizing the existence of a legal de-  
15 fense called equitable estoppel and were accordingly  
16 giving the Government a chance to prove its case, to  
17 prove facts constituting a -- such an estoppel.

18 THE COURT: What I was saying was that I ought  
19 to have more here than a complaint and an answer.

20 MR. STERNS: Our essential argument today, Your  
21 Honor, is that all you have at this time is a mere  
22 complaint, mere allegations. Searching the record on  
23 this motion under, I believe, rule 56, you have before  
24 you a filed stipulation of facts, which incidentally  
25 purports to be substantially all and probably all of the



1 facts.

2 Number two, you have the deposition of one of the  
3 two taxpayers, the husband. And number three, you have  
4 the desposition of the appellate division conferee with  
5 whom the settlement was originally effectuated. That is  
6 the record.

7 We suggest and we have commented upon it be a --  
8 we have commented upon it a bit in our letter  
9 memorandum, that those three pieces of paper plus the  
10 pleadings themselves constitute the entire record and  
11 are utterly devoid of any factual proof or factual  
12 proof or factual demonstration that there in fact  
13 exists any elements giving rise to the application of  
14 the doctrine, if indeed the doctrine of equitable  
15 estoppel exists, in the first place. Every case upon  
16 which the Government has relied for the past two years  
17 and again in its brief is a situation involving a  
18 package deal. The Government gave up "X" in return for  
19 "Y".

20 In the Lignos case which we urged upon you almost  
21 two years ago, out of Buffalo, in a much more recent  
22 case, General Split Corporation, out of another circuit  
23 and in a third case, Cooper Agency, which I believe is  
24 four years old, in those three appellate court cases,  
25 in each of the three the deal was essentially -- if I

1 may use the word "deal" -- that we will give you what  
2 you want, Mr. Taypayer, by letter, say, allowing you  
3 to enter a final judgment, a final decision in the  
4 tax court -- I may have my syntax a bit reversed --  
5 what I am saying is in Lignos or in General Split, the  
6 facts of which are generally the same, in those cases  
7 one year was before the tax court, perhaps somewhat  
8 similar to the previous situation argued, one year was  
9 in the tax court, two other years were not in the tax  
10 court. The Government and the taxpayer got together,  
11 consented to the entry of a tax court order for, let's  
12 say, year number one, and then settled up years numbers  
13 two and three. After the tax court decision became  
14 final, not appealable, and in one of those cases very  
15 shortly thereafter, the Lignos case, the taxpayer  
16 opened up the other two years by filing a refund suit.

17 As we have suggested in our letter memorandum,  
18 there is a clear, almost unmistakable intimation or  
19 inference in the Lignos case that it was the taxpayer's  
20 intent the -- at the time he signed the 870ad.

21 THE COURT: Well, what is the time? Once the time  
22 of making assessment has gone by, isn't that as equally  
23 as final as a tax court determination after the time to  
24 appeal has expired?

25 MR. STEARNS: Yes, it is Your Honor.

1 THE COURT: So that whatever give and take has  
2 occurred has now been cast into some sort of insoluble  
3 form, it is permanent?

4 MR. STEARNS: Yes, it is.

5 THE COURT: There is no going back, just as there  
6 is no going back beyond the finality of the tax court,  
7 there is no going back again?

8 MR. STEARNS: That's right, Your Honor, except  
9 that we suggest and have suggested both in the letter  
10 memorandum and two years ago, that the Government is  
11 not without remedy here. The Government can counter-  
12 claim in the suit up to and including the full amount  
13 of the suit. In other words, through the recognized  
14 doctrine of equitable recoupment.

15 THE COURT: Isn't that like giving snowballs to  
16 the eskimos?

17 MR. STEARNS: If you wish to put it that way,  
18 but we believe --

19 THE COURT: If you have already paid half and the  
20 Government claims the whole, and you say, well, if we  
21 are unsuccessful now and you are successful, you can't  
22 get the whole, but you can keep what you got, we won't  
23 take the overcoat away from you?

24 MR. STEARNS: Yes, Your Honor.

25 THE COURT: All right.

1 MR. STEARNS: I suggest --

2 THE COURT: I guess we are thinking along the  
3 same lines.

4 MR. STEARNS: I don't think we have any argument  
5 yet, Your Honor. What we are suggesting is that the  
6 only way with finality under the code to close out  
7 these matters is through the so-called closing agree-  
8 ment under an entirely different section of the Internal  
9 Revenue Code. Without the closing agreement we suggest  
10 there is no final closing in that sense of the word.

11 THE COURT: I don't think the Government is making  
12 that contention, if they were they wouldn't reach an  
13 estoppel of any kind, would they?

14 MR. STEARNS: It is our contention the Government  
15 does take the position that 870 ad because of one of  
16 two pieces of language found on it does in effect con-  
17 stitute a closing agreement.

18 THE COURT: As I understand it, it makes little  
19 difference how the Government interprets, it is evidence  
20 which can support to some extent an estoppel.

21 MR. LAWLER: Perhaps I may clarify the Government's  
22 position. We are not arguing that this is a closing  
23 agreement, what we are arguing --

24 THE COURT: That is apparent from your briefs.

25 MR. STEARNS: Your Honor, if I may continue in

1 that department, if they are not in fact suggesting  
2 that this form in effect constitutes a closing agreement,  
3 then we believe it is incumbent upon them by their  
4 interposition of an affirmative defense with the  
5 burden of proof to show facts of an estoppel other than  
6 the mere execution of an 870 ad. In our judgement the  
7 only thing that has been shown in the record is the  
8 mere signing of an 870 ad, nothing more.

9 If we assume, as you may recall, that that four-  
10 fold test mentioned in a relatively ancient case, and  
11 much more recently in Lignos what constitutes an  
12 estoppel, one, two, three, four, if we assume that is  
13 the law of the Second Circuit, and I will so assume  
14 for the purpose of this argument, we suggest the test  
15 item number one has not been met.

16 This man signed an 870 ad. There have been no  
17 false representations as far as we can see in an  
18 examination of this record, nor has there been any  
19 wrongful misleading statements which is part of that  
20 element number one. All three of the cases I cited,  
21 Lignos, General Split and Cooper Agency are again  
22 package deals where the Government really was hurt and  
23 couldn't get it back. As -- in one of them as a fact,  
24 -- as a matter of fact -- the Cooper Agency case, the  
25 Government allowed the statute of limitations to run

1        against 14 taxpayers in exchange for a settlement  
2        arrangement with the 15th. Shortly after that had  
3        been effectuated, the 15th opened up the settlement,  
4        the Government cried foul, and the Government won. We  
5        have no argument with that case. We are suggesting that  
6        Stair is not the Cooper nor Lignos nor General Split  
7        case, it is a straight situation, all of the others  
8        are package deals, and one of which, as the court it-  
9        self already suggested, the Lignos court, the taxpayer  
10       was playing his cards very close to the vest. It may  
11       be the case in the other two, I have no way of knowing.

12       Again we are suggesting no facts have been demon-  
13       strated by the Government in support of its burden of  
14       proof. In fact, as we suggest in our letter memorandum,  
15       the entire tenor of plaintiff Mr. Stair's deposition  
16       compels for us an entirely opposite conclusion, not  
17       just a neutral but an entirely opposite conclusion,  
18       and to end -- to that end we have set forth in our  
19       letter memorandum some extracts from that deposition,  
20       not taken at random, incidentally, but taken because  
21       those pages were cited by the Government in its brief,  
22       and we felt that the Government was entirely wrong  
23       in its factual version. We wanted to bring that ex-  
24       pressly to your attention.

25       THE COURT: Well, of course in the first place I

1 think it should be understood that the motion cannot  
2 be decided on the statements in the memoranda. There  
3 is proof here. The proof is the stipulated facts. I  
4 think if I can borrow a phrase from Lignos just used by  
5 counsel, Stair was playing the card equally close to  
6 his chest.

7 It is significant to me that the suit was brought  
8 within a relatively short time, very short time after  
9 the period for making assessments had expired.

10 Now under the stipulated facts it appears that  
11 the taxpayers had a substantial sum of money, in excess  
12 of a half million dollars, as a result of a condemna-  
13 tion settlement, I would infer, rather than an award,  
14 for some property. That the gain on that was reported  
15 as long term capital gains and the tax computed on that  
16 basis and paid. On an audit the Internal Revenue  
17 Service determined that by reason of the taxpayer's  
18 business and the conduct of that business that the  
19 gain should be reported as ordinary income instead,  
20 and assessed a deficiency of some \$83,000 tax. That  
21 was contested by the taxpayer's counsel, who,  
22 incidentally, are known to the court as exceptionally  
23 able tax counsel, and having a difference of viewpoint  
24 from that held by the Internal Revenue people, recommend-  
25 ed that the matter -- that arrangements be made to



1 litigate the matter. It is not necessary nor would  
2 it be advisable for me to even treat with the merits  
3 at this time.

4 Subsequently I would infer from the stipulated  
5 facts that the taxpayer had a distaste for litigation  
6 and felt perhaps as a businessman his negotiating  
7 skills passed those of counsel, he preferred to rely  
8 on his own judgment and attempted to confer personally  
9 with the agents for the Government, and I don't  
10 attribute -- I am not inferring any misconduct on  
11 anyone's part, this was all done with knowledge of  
12 the taxpayer's attorneys -- as a result of that meetings  
13 were held in October of 1966 and the taxpayer made a  
14 proposition to the IRS conferees that half of the gain  
15 should be treated as capital gain and half as ordinary  
16 income. The conferee agreed to recommend that. How-  
17 ever, it was rejected at a higher level. This resulted  
18 in a new proposal that approximately 50% of the tax,  
19 the deficiency tax be paid and that was \$41,000.  
20 The amount of the refund claim was \$93,000 and something  
21 and \$39,000 was related to the difference of the tax  
22 treatment on -- was related to the difference in the tax  
23 treatment of the gains on the condemnation proceeds of  
24 the condemnation of the realty as capital gains or as  
25 ordinary income.



1 A form 870 ad was executed by plaintiff and by  
2 the defendants in accordance with that agreement in  
3 November 1966, and the taxpayer paid the agreed amount  
4 as provided by the form 870 ad.

5 Thereafter on November 25, 1968 he timely filed  
6 a claim for a refund. The claim for refund was re-  
7 jected. The claim for the refund, of course, was for  
8 the full amount attributable to the taxation of the  
9 gain on the realty transaction as ordinary income.

10 Thereafter on October 20, 1970 suit was filed  
11 at the time that the claim for refund was filed, as  
12 I have indicated before.

13 It is significant that the Government was then  
14 barred by the statute of limitations from ascertaining  
15 its original position, that is, that the entire gain  
16 was ordinary income and that the Government was in fact  
17 entitled to twice as much, substantially, as it had  
18 compromised its claim for.

19 I think that this is the silence, the studied  
20 silence until after statute of limitations on assess-  
21 ments had run. The Government's position is obviously  
22 changed with complete detriment, it can no longer  
23 collect the taxes by recouping the claims to which it  
24 is entitled.

25 It seems to me to be a situation coming squarely

1 within the principles laid down in Lignos. The fact  
2 that Lignos dealt with multiple years and this deals  
3 with one year, in view of the time element of the  
4 filing of the claim for refund, I find without  
5 significance.

6 It seems to me that the plaintiff should not be  
7 allowed to withhold their challenge until they have  
8 disarmed completely the defendant.

9 Under the pleadings and the stipulated facts I  
10 find no genuine issues of material facts. The plain-  
11 tiffs are estopped from recovery. Summary judgment  
12 should be entered dismissing the plaintiff's complaint.

13 This is a question that would have to be met on  
14 the trial. I think that there would be no issues in  
15 relation to this question. There would be little  
16 purpose in trying this issue separately, because the  
17 whole issue, all the issues in the case with the  
18 stipulated facts wouldn't enlarge the time consumed  
19 greatly, and I see no purpose in taking the judicial  
20 time, counsel's time that would be involved in trying  
21 the issues on the merits, to my mind unnecessarily.

22 If I am in error, we will try them all together.

23 All right, submit an order.  
24  
25

\*\*\*\*\*

41a

STEARNS & STEARNS

ATTORNEYS AT LAW

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P.O. Box 1964

CONRAD E. STEARNS

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BINGHAMTON, NEW YORK 13902

TELEPHONE 723-9481

AREA CODE 607

October 14, 1974

Honorable Edmund Port  
United States District Judge  
Northern District of New York  
U.S. Court House and Post Office  
Auburn, New York 13021

COPY

Re: Stair vs. United States  
Civil Action No. 70-CV-366

Dear Judge Port:

Throughout your carefully articulated rationale underlying the decision made by you from the Bench on Friday, October 11, 1974, you showed a deep concern for the timing of Mr. Stair's filing of his claim for refund -- his apparently waiting, deliberately, until after the Statute of Limitations had run as against the Government, before making the claim. Indeed, at one point in your reasoning you referred to his "playing it close to the chest", while at another point you pictured his "studied silence", the latter apparently equivalent to a wrongful misleading silence.

We wish to bring to your attention the fact -- clearly in the record of this case\* -- that the Tri-S case (400 F.2d 862; 10th Cir.), upon the basis of which Mr. Stair was advised and persuaded by legal counsel to bring on his claim, was not decided until August 22, 1968. It was for this reason, and this reason alone, that Mr. Stair "waited" until he did to bring on his claim for refund.

It was with respect to this matter of Mr. Stair's timing that I approached the Bench immediately after your pronouncement of the decision, since I had not had an opportunity to explain during your own summary of the basis for your decision.

As also established in the record of this case, at the time of his actually executing the 870-AD the thought of opening up the settlement and bringing on a claim had never entered his mind. Stair Dep. p. 33.

For these reasons, we most respectfully request your consideration of a re-argument on the motion. In this manner, we hope to determine whether or not your decision itself was based

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\*See, e.g., explanation set forth in "Claim", Form 843, attached to Complaint; see also Stair Dep. p. 44.

Hon. Edmund Port  
Re: Stair vs. United States

October 14, 1974  
Page 2

solely or in large part upon the timing of the claim itself. This, in turn, is vital to us on any appeal.

We would appreciate your consideration of this request. If you deem it necessary or feasible, we will, of course, be happy to bring the matter on for such further consideration via a formal motion for re-argument.

Sincerely,



---

David G. Stearns  
Co-Counsel for the  
Plaintiffs

DGS:pam

cc: Clerk, United States District Court  
U.S. Department of Justice  
U.S. Attorney James Sullivan, Jr.  
Mr. Arthur Stair  
Harry Bangilsdorf, C.P.A.

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

ARTHUR L. STAIR and BERNICE STAIR,

Plaintiffs

vs.

70-CV-366

UNITED STATES OF AMERICA,

Defendant.

---

EDMUND PORT, Judge

Memorandum

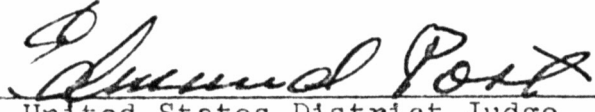
The plaintiff has made a letter application for re-argument of the defendant's motion for summary judgment, granted from the bench at the conclusion of the argument on October 11, 1974. The letter points out that the matters upon which the re-argument is sought were "clearly in the record" before the court. Cognizance was taken of them on the initial argument, and there is no need for re-argument. I do not attribute the same significance to C.I.R. v. Tri-S Corporation, 400 F.2d 862 (10 Cir. 1968) that plaintiff does.

Viewed in its most favorable light, it merely bolsters the advice the plaintiff had received from his attorney before he initiated the settlement, which he now seeks to disavow. See, Stip. of Facts, No. 27.

44a

Treating the letter as a motion for re-argument, the same  
is hereby denied.

SO ORDERED.

  
United States District Judge

Dated: November 14, 1974  
Auburn, New York

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

-----X

ARTHUR L. STAIR and BERNICE STAIR, :  
Plaintiffs :

v. :

CIVIL ACTION NO. 70-CV-366

UNITED STATES OF AMERICA, :  
Defendant :

JUDGMENT

-----X

This action having been submitted to the Court, Honorable Edmund Port, District Judge, on defendant's Motion for Summary Judgment, and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiffs take nothing, that the action be dismissed with prejudice, and that the defendant, the United States of America, recover of the plaintiffs, Arthur L. and Bernice Stair, its costs of action.

Dated at \_\_\_\_\_, New York, this \_\_\_\_\_ day  
of \_\_\_\_\_, 1974.

\_\_\_\_\_  
Clerk of Court

Approved as to Form:

DAVID G. STEARNS

\_\_\_\_\_  
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ARTHUR L. STAIR & BERNICE STAIR,

Plaintiffs,

-VS-

UNITED STATES OF AMERICA,

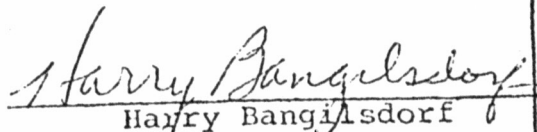
Defendant.

Civil Action No.  
70-CV-366

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Arthur L. Stair and Bernice Stair, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment granting defendant's motion for summary judgment entered in this action on October 30, 1974, and from each and every part thereof.

November 1, 1974

  
Harry Bangelsdorf

  
David G. Stearns

Attorneys for Plaintiffs-  
Appellants

Office and P.O. Address

c/o Stearns & Stearns, Esqs.  
507 Press Building  
P.O. Box 1964  
Binghamton, New York 13902



